

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of Petition :  
                    of :  
NORCROSS, INC. :  
for refund of franchise tax under :  
Article 9-A of the tax law for the :  
fiscal years ended February 28, 1966 :  
and February 29, 1968 and redetermi- :  
nation of deficiency for the fiscal :  
year ended February 28, 1969. :  
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Norcross, Inc. having filed petition for refund of franchise under Article 9-A of the tax law for the fiscal years ended February 28, 1966 and February 29, 1968 and redetermination of deficiency for the fiscal year ended February 28, 1969, and a hearing having been held on June 7, 1972 before John J. Genevich, Hearing Officer of the Department of Taxation and Finance, at the office of the State Tax Commission, 80 Centre Street, New York City, at which hearing F. W. Handschur, assistant controller of the corporation, Sidney Meyer and Howard Siegel, Certified Public Accountants, and Edmund J. Burns, Esq., of Counsel for the taxpayer, appeared personally and testified, and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) Norcross, Inc. (Norcross) was incorporated under the laws of New York State on December 23, 1946. It filed reports for the fiscal years ended February 28, 1966 and February 29, 1968 without allocating its business income. The report for the fiscal year ended February 28, 1969 indicated a business allocation of 64.47%. Claims for credit or refund were timely filed in the amount of \$35,514.49 for the fiscal year ended February 28, 1966 and \$31,860 for the fiscal year ended February 29, 1968 based on business allocations of 78.2% and 77.2% respectively.

The Corporation Tax Bureau denied the claims for credit or refund and issued a notice of deficiency for the fiscal year ended February 28, 1969, disallowing an allocation of business income, as follows:

Business income	\$1,016,589.00
Investment income allocated to New York	21.00
Base	1,016,610.00
Tax at 7%	71,163.00
Tax per report	45,879.00
Tax deficiency	25,284.00

(2) Petition for refund of tax for the fiscal years ended February 28, 1966 and February 29, 1968 and redetermination of deficiency for the fiscal year ended February 28, 1969 was timely filed.

(3) Norcross is engaged in selling greeting cards, wrapping materials, stationery and related products throughout the continental United States. Its offices are located at 244 Madison Avenue, New York City, and its products are manufactured, warehoused and shipped from Brooklyn, New York, and Queens, New York. District sales managers, who are paid on a commission basis, leased sales offices in their own names in the states of California, Illinois, Massachusetts, Michigan, Ohio and Pennsylvania. Norcross reimbursed the district sales manager of the Philadelphia office for 50% of his rent. None of the other district sales managers were reimbursed for any portion of their rent. No franchise or income tax returns were filed by Norcross in the various states in which the district managers had sales offices.

(4) Along with its sales of greeting cards and related products, Norcross furnishes display racks to the various retail outlets that carry its line of products. In some instances they are furnished free of charge, generally in the case of large outlets. In other cases, they are sold for an amount approximating Norcross' cost. Credit allowances are usually

given, in these latter cases, for varying amounts of the sales price due based upon the purchasing customer's volume of business with Norcross. The display racks are manufactured to Norcross' order by two suppliers located outside New York. The racks are retained at the premises of the suppliers until shipping instructions are received from Norcross, at which time shipment is made to the designated retail outlets of Norcross.

(5) Section 210.3(a)(4) of the tax law states in part:

"provided, however, that if the taxpayer does not have a regular place of business outside this state other than a statutory office, the business allocation shall be one hundred per cent;"

(6) A regular place of business outside this state is defined by Section 4.11(b) of Ruling of State Tax Commission as follows:

"A regular place of business is any bona fide office (other than a statutory office), factory, warehouse, or other space which is regularly used by the taxpayer in carrying on its business. Where as a regular course of business, property of the taxpayer is stored by it in a public warehouse until it is shipped to customers, such warehouse is considered a regular place of business of the taxpayer and, where as a regular course of business, raw material or partially finished goods of a taxpayer are delivered to an independent contractor to be converted, processed, finished or improved, and the finished goods remain in the possession of the independent contractor until shipped to customers, the plant of such independent contractor is considered a regular place of business of the taxpayer."

The State Tax Commission hereby

DECIDES:

(A) The sales offices leased by the district sales managers do not qualify as bona fide regular places of business


of Norcross, Inc. pursuant to the taxpayer's own arrangements. The taxpayer is not holding itself out to be doing business, for tax purposes, in the various states in which such offices are located.


(B) The two vendors who manufacture the display racks are mere sources of supply from whom Norcross, Inc. makes purchases, and such locations do not qualify as regular places of business of the taxpayer. Furthermore, the taxpayer is not in the business of selling such equipment which is furnished free of charge or at less than cost because of the credit allowances granted. Such equipment does not constitute regular inventory but a selling aid to assist in the merchandising of greeting cards, stationery and wrapping materials which represent the business of Norcross, Inc. Storage of such equipment at the premises of the supplier would not, in any event, qualify as a regular place of business of the taxpayer.

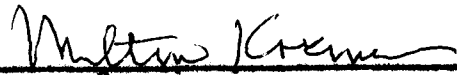
(C) The petition for refund for the fiscal years ended February 28, 1966 and February 29, 1968 is denied, and the notice of deficiency issued for the fiscal year ended February 28, 1969 is affirmed together with interest due in accordance with Section 1084 of Article 27 of the tax law.

Dated: Albany, New York  
this 26th day of September 1972.

STATE TAX COMMISSION

  
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President

  
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Commissioner

  
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Commissioner